IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/09/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.131 of 1995

1. Nagarajan
2. Mohan .. Appellants

-Vs-

State through,
Inspector of Police,
Rajapalayam North Police Station. .. Respondent

This Criminal Appeal is preferred under S.374 of Code of Criminal Procedure against the conviction and sentence passed on the appellants by the Sessions Judge, Kamarajar District at Srivilliputhur dated 12.1.1995 made in S.C.No.37 of 1994.

For Appellants : Mr.Mohideen Basha

For Respondent : Mr.V.M.R.Ravindran,
Additional Public Prosecutor
:JUDGMENT

M.CHOCKALINGAM, J.

The appellants have assailed the judgment of the Court of Sessions, Kamarajar District at Srivilliputhur, wherein they were found guilty under S.302 read with S.34 of I.P.C. and awarded life imprisonment.

2. Both the appellants/accused stood charged under S.302 read with S.34 of I.P.C. alleging that on 4.5.1992 at about 11.00 P.M. in front of Kamarajar Nagar Girls High School, due to prior enmity on money transactions, both the appellants stabbed the deceased Periasamy indiscriminately, and consequently, the said Periasamy died instantaneously.
3. The facts which led to the said case, can briefly be stated as follows:
P.W.1 Mariammal was a resident of Duraisamiapuram, Rajapalayam. The deceased Periasamy @ Ayyarettu, the son of P.W.1 was residing with her and was selling Kanja. The deceased owed the first accused Rs.200 /-, which he borrowed earlier i.e. one day prior to the occurrence. At about 9.30 P.M., the deceased was selling ganja before Meenakshi Theatre. P.W.6 Sonaimuthu was

also standing nearby. At that time A-1 who came there made an admission of the said sum and put his hand into the pocket of the deceased. Looking at this, P.W.6 intervened and enquired about the same, and the deceased admitted that he owed Rs.2 00/- to the first accused. P.W.1 advised him to make the payment earlier. A-1 informed the deceased that he should make the payment within a week, and otherwise, he has to face dire consequences. On the date of occurrence viz. 4.5.1992 at about 8.30 P.M., P.W.1 and the deceased were in the house. One Periasamy and Ayyar called the deceased to come for hunting. Accordingly the deceased took his dog, a bag and a rope and started with them. P.W.3 Ramar, P.W.4 Paulraj, P.W.5 Kamaraj, Dharman, Azhagirisamy, Periasamy and Velusamy all accompanied them. When all of them went near Meenakshi Theatre, both the accused intercepted the deceased and took him assailed. The deceased requested the above witnesses, who accompanied them, to proceed further stating that he would join them later. At about 11.30 P.M., P.W.8 Vanamurthy found both the accused with their shirts with bloodstain in a School near Rajapalayam Bus Stand. Both the accused came to the tea shop of P.W.9 Chandran. At or about that time, when P.W.9 and P.W.10 Gopal were present, both the accused washed their hands in the water tub placed in front of the shop. All the witnesses returned from hunting at about 4.00 A.M. on 5.5.1992. At about 6.00 A.M., as usual P.W.1 woke up, opened the doors and went outside. She found her dog being tied and the bag and rope which were taken by the deceased were lying outside. Her younger son Vellaiyyan came there and informed her that her elder son Ayyarettu was found murdered near Girls High School. P.W.1 rushed to the site of incident and found the dead body of her son, the deceased.

4. On coming to know about the incident, P.W.11 Lingam, Village Administrative Officer accompanied by his menial, went to the place of occurrence. On 5.5.1992 at about 7.00 A.M., P.W.1 lodged Ex.P1 complaint before P.W.13 Deivasigamani, Sub Inspector of Police. On the strength of Ex.P1 complaint, P.W.13 registered a case in Cr.No.253/92 under S.302 of I.P.C. He despatched Ex.P12 express First Information Report to the concerned court. On receipt of the copy of the F.I.R., P.W.14 Amalanathan, Inspector of Police, attached to Rajapalayam Rural Police Station, proceeded to the site of incident at about 8.00 A.M., inspected the place at about 8.30 A.M., and prepared Ex.P4 observation mahazar and Ex.P13 rough sketch. He conducted inquest in the presence of the witnesses between 8.30 A.M. and 11.00 A.M. and prepared Ex.P14 inquest report. The Investigation Officer recorded the statement of witnesses. The dead body of Periasamy was sent to Government Hospital along with Ex.P2 requisition for autopsy through a constable by name Pandiaraj P.C. 1301. The Investigation Officer recovered M.O.2 bloodstained earth, M.O.3 sample earth, M.O.4 ganja packet, M.O.8 bloodstained cement plaster, M.O.9 cement plaster without bloodstain and M.O.10 footwear under Ex.P5 mahazar.

5. P.W.2 Dr.Paramasivam got Ex.P2 requisition from the Investigation Officer, commenced and conducted the autopsy on the dead body of Periasamy and found the following external injuries and the corresponding internal injuries.

1. A stab injury on the right side middle of neck lateral to the Sternomastoid muscle, 5 cms x 4 cm x upto the deep fascia, the skin over the injury is missing edges irregular.

2. A stab injury on the centre of front of neck flux below the mandible and

mediale to the Sternomastoid muscle 6 cm x 3 cm x upto the vessels and nerves with clear cut edges.
3. A stab injury just below the injury No.2 – 4 cm x 3 cm x upto the deep fascia and muscles.
4. A stab injury on the front of neck just above the Suprasternal notch 6 cm x 4 cm x blood vessels and muscles with clear cut edges.
5. An incised wound on the left side of middle of neck extending from the centre of the neck to the Sternomastoid muscles 10 cm x 6 cm x upto the muscles and thyroid cartilage. Blood vessels nerves, deep fascia and muscles were out edges are clean and invented viz. blood vessels, external jugular vein, external carotid arteries.
6. An incised wound on the left side middle of face extending from the infra orbital region to 5 cm medial to the ear lope 6 cm x 2 cm x upto Superficial fascia.
7. An incised wound on the left lower part of face extending to the medial side and front of upper part neck 12 cm x 6 cm x upto the mandible with clear cut edges.
8. A stab injury on the left side root of neck 3 cm x 2 cm x deep fascia and muscles with clear cut edges.
9. A stab injury on the lower half of front of chest just 4 cm above the xipisternum N.C. the muscles inside and the sternum is present 3 cm x 2 cm x Sternum and heart wound circular.
10. A multiple stab injury on the left Dorsum of n.c. corresponding to the third and free finger 3 cm x 2 cm x upto the tendons and muscles.
11. A lacerated injury on the left lateral aspect of upper 1/3 of thigh 6 cm x 3 cm x deep fascia.
12. A stab injury on the left upper 1/3 of lateral side of thigh just 4 cms above the injury No.7 - 2 cm x 2 cm x deep fascia with cut edges.
On opening of thorax, preserved blood clot underneath sternum. Fracture of Sternum present.
Heart: A punctured wound in the right article 3 cm x 2 cm upto the muscle N.C. and heart chambers empty. This is corresponding to injury No.9 of the external injuries.
P.W.2 Doctor has issued Ex.P3 Postmortem Certificate and has opined that the deceased would appear to have died of injury to vital organ namely heart, and haemorrhage 9 to 12 hours prior to postmortem.
6. On 15.5.1992 at about 6.00 A.M., A-1 was arrested at Malaiyadipatti, when he gave a confessional statement, the admissible portion of which is marked as Ex.P7. Following the confession, A-1 produced M. O.6 bloodstained shirt and M.O.7 bloodstained knife which were recovered by P.W.14 under Ex.P6 mahazar. Apart from those material objects, A-1 also produced M.O.5 footwear, which was recovered. On 16.5.1992 at about 8 A.M., A-2 was arrested. The Investigation Officer made Ex.P8 to the concerned Judicial Magistrate's Court to send all the material objects for chemical analysis. Accordingly, the material objects were subjected to chemical analysis on the request made by the Judicial Magistrate, Srivilluputhur. The reports of the Chemical Analyst and Serologist were marked as Exs.P10 and P11 respectively. On completion of the investigation, the Inspector of Police filed a charge sheet against the accused.
7. In order to bring home the guilt of the accused, the prosecution has examined 14 witnesses and marked 14 exhibits and 11 material objects. The

appellants, when questioned under S.313 of Code of Criminal Procedure, flatly denied the versions of the prosecution witnesses, but would add that those versions were false. No defence witness was examined. After considering the submissions made by both sides and scrutiny of the materials available, the learned Sessions Judge found the accused guilty under S.302 read with S.34 of I.P.C. and awarded life imprisonment. Aggrieved appellants have brought forth this appeal.

8. Strongly attacking the judgment of the court below, the learned Counsel appearing for the appellants would submit that the lower court has found them guilty in a case where there was no evidence, and the prosecution miserably failed to prove the case or show any nexus between the appellants and the crime in question; that the prosecution did not produce any direct evidence, but has solely depended on the circumstantial evidence, but in the instant case, the prosecution has not even proved one circumstance indicating the guilt of the accused; that except two witnesses, all other witnesses have turned hostile; that P.W.1 was neither an eyewitness nor examined to speak about any circumstance; that except P.Ws.5 and 6, which was much relied on by the prosecution, all witnesses have turned hostile; that even P.Ws.5 and 6 have not spoken about any circumstance connecting the accused to the crime; that from the evidence of the witnesses, it would be clear that the deceased was a ganja seller; that number of police cases were against him, and he had number of names also; that a reading of the evidence of P.W.7, Village Administrative Officer would clearly reveal that both the arrest and the consequent recovery cannot but be false; that even the reports of the chemical analyst and serologist did not support the prosecution case; that there is absolutely no evidence incriminating the accused; that the only circumstance that the deceased was seen in the company of the accused the previous night has not been proved by the prosecution; that it is pertinent to note that the alleged recovery of the bloodstained shirt is only 10 days after the alleged incident; that there is no evidence as to whom the bloodstained shirt belongs to; that in the instant case, there is no motive for the accused to kill the deceased; that in view of the above reasons, the judgment of the lower court cannot be sustained, and hence, the same is liable to be set aside, and the accused be acquitted of the charge.

9. The learned Additional Public Prosecutor in his attempt to sustain the judgment of the court below would submit that it is true that number of witnesses examined by the prosecution have turned hostile, but P.Ws.5 and 6 would clearly speak about the motive for the accused to commit the crime, and the words uttered by the first accused before the occurrence were spoken to by them; that from the evidence of P.W.5, it would be clear that a few hours prior to the occurrence, he has last seen the deceased in the company of both the accused; that this evidence would indicate that it was those accused, who have committed the murder of the deceased; that apart from that, the prosecution has also proved through the clinching evidence that A-1 has given confessional statement and pursuant to the same, he has produced the material objects including the knife used by the accused at the time of occurrence; that this confessional statement leading to the recovery of the weapon used by them at the time of occurrence would clearly point to the guilt of the accused; that the reports of the chemical analyst and serologist have also supported the prosecution case; that it is true that the prosecution case rested exclusively on the circumstantial evidence; that by adducing sufficient

and acceptable evidence, the prosecution has proved the case beyond reasonable doubt; that the lower court only after careful scrutiny and analysis of the entire evidence has come to the correct conclusion that the accused have committed the heinous crime of murder of Periasamy, and hence, the judgment of the lower Court has got to be sustained, and the appeal be dismissed.

10. As seen above, the appellants herein, ranked as A-1 and A-2 before the court below stood charged for murder alleging that they, in pursuance of the common object, caused the death of one Periasamy @ Ayyarettu, the son of P.W.1 on the night of 4th May, 1992 near Girls High School, Kamarajar Nagar, Rajapalayam. In view of the medical evidence adduced by the prosecution through P.W.2 Postmortem Doctor, his certificate under Ex.P3 and his opinion, it cannot be disputed that the deceased Periasamy died out of homicidal violence, and this fact is also not disputed by the appellants.

11. Entirely resting its case on circumstantial evidence, the prosecution, in order to prove the circumstances relied on by it, marched ten witnesses, apart from adducing medical and scientific evidence. Out of those witnesses, P.Ws.3, 4, 7, 8, 9 and 10 have turned hostile. Their evidence was of no use to the prosecution to prove all or any of the facts sought to be proved through them. P.W.6 Sonaimuthu has been examined to prove the motive for the appellants/accused to commit the crime. According to P.W.6, on a day at about 9.30 P.M. 2 ½ years prior to his evidence, A-1 demanded the deceased, the money due to him, and the deceased informed the witness that he was liable to pay Rs.200/- to A-1, and at the time of the said incident, A-1 directed the deceased that he should make the payment within a week, and otherwise, he should face dire consequences. It is pertinent to note that nowhere P.W.6 has stated when that incident took place. If A-1 told the deceased that he should make the payment within a week, and if not, to face dire consequences, the incident in question could not have taken place on the date of occurrence. In his evidence, P.W.6 has not made any mention about A-2. According to the said witness, A-1 was not known to him previously. He has not identified the accused at the time of the identification parade. All the above would cast a doubt whether any incident as narrated by P.W.6 would have taken place either before or on the date of occurrence.

12. P.W.5 Kamaraj was examined by the prosecution to prove that the deceased was last seen in the company of both the accused at about 8.30 P.M. on 4.5.1992 in front of Meenakshi Theatre. According to P.W.5, on the date of occurrence, about ten per including the deceased proceeded for hunting, and near Meenakshi Theatre, both the appellants intercepted the deceased and took him from there, and the witness and others proceeded to the forest for hunting, and the next morning, he came to know that Periasamy was murdered. Much reliance was placed by the prosecution on the testimony of this witness, and apart from that, the lower court has also relied on the same. It is not the case of the prosecution that the appellants were already known to P. W.5. From the available records, it could be seen that an identification parade was conducted by the concerned Judicial Magistrate on the requisition made by the investigation agency. For the reasons best known to the prosecution, the entire proceedings as to the identification parade was neither marked nor relied on by the prosecution. But, the Investigation Officer in his evidence has categorically admitted that during the identification parade, P.W.5 has not identified the appellants. If the witness could not identify the accused in the identification parade, which took place within a short span of time, it

would be hard and unsafe to accept his evidence stating that the deceased was found in the company of the appellants on the date of occurrence that was nearly 2 ½ years before his evidence.

13. One other circumstance relied on by the prosecution was the confessional statement alleged to have been given by A-1 and the recovery of M.O.6 bloodstained shirt and M.O.7 knife. A comparison of the evidence of P.W.11 Lingam, Village Administrative Officer, the witness examined to prove the arrest and confessional statement of A-1 and recovery of those material objects with that of P.W.14 Investigation Officer would make it clear that no evidentiary value can be attached to the said piece of evidence. According to P.W.11 Village Administrative Officer, after 10 days from the date of occurrence, he went to Malayadipatti area where he found A-1 being interrogated after arrest, by the police officials, and at that time, the bloodstained knife was by his side, and the police recovered M.O.6 bloodstained shirt and M.O.7 knife under Ex.P6 mahazar. According to the prosecution, A-1 was arrested on the North-South Road of North Malayadipatti, where he gave the confessional statement. It was not the case of the prosecution that A-1 produced the material objects at the place where the confessional statement was made by him and recorded by the Investigation Officer. From Ex.P6 mahazar it could be seen that the said material objects were recovered near Kazhudhakadavu Odai, Sanjeevi Malayadivaram, Malayadipatti. Nowhere P.W.11 has stated in his evidence that A-1 took the police officials and witnesses to the aforesaid place and produced the above material objects. All the above would go to show that the evidence of P.W.11, recovery witness and the Investigation Officer would be inconsistent to each other, and this piece of evidence coupled with Ex.P6 mahazar would make the falsity of the confessional statement and recovery of the material objects explicit.

14. According to P.W.1, it was her younger son who informed her about the incident. But, the said younger son of P.W.1 was not examined. P.W.1 has averred in her complaint that her deceased son was intercepted on the night of the occurrence day by two persons who were known to P.W.3. It remains to be stated that both P.Ws.3 and 4 have turned hostile. It is not the case of the prosecution that P.W.1 knew anything about the occurrence. From the available materials it could be seen that P.W.1 was only an informer to the police to set the criminal law in motion. Law does not require the prosecution either to allege number of circumstances or to prove them, in any given case when it rests upon the circumstantial evidence. Even one strong circumstance indicating that except the accused, no one could have committed the offence and pointing to the guilt of the accused, would be sufficient. But, in the instant case, though the prosecution in its attempt to bring home the guilt of the accused has alleged number of circumstances, it could not prove at least one circumstance to connect the accused to the crime in question. Thus, the prosecution has miserably failed to prove its case. Without considering all the above aspects of the matter, the lower court went wrong in finding the appellants/accused guilty and awarding the punishment. Hence, without any hesitation, the judgment of conviction and sentence passed by the court below has got to be necessarily set aside, and the appellants/ accused be acquitted of the charge.

15. In the result, this criminal appeal is allowed, setting aside the judgment of the court below. The appellants/A-1 and A-2 are acquitted of the

charge forthwith. The bail bonds executed by the appellants, if any, shall stand cancelled.

Index: Yes
Internet: Yes
To:
1. The Sessions Judge, Kamarajar District at Srivilliputhur.
2. The Judicial Magistrate No.III, Srivilliputhur.
3. The Judicial Magistrate No.III, Srivilliputhur,
Through The Chief Judicial Magistrate, Srivilliputhur.
4. The Superintendent, Central Prison, Madurai.
5. The Public Prosecutor, Madras.
6. The District Collector, Kamarajar District at
Srivilliputhur.
7. The Director General of Police, Chennai 4.
8. The Inspector of Police, Rajapalayam North Police
Station.

nsv/